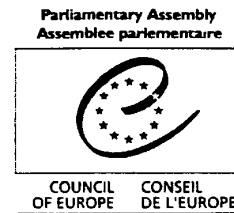


**Parliamentary Assembly**  
**Assemblée parlementaire**



**Doc. 10392**  
6 January 2005

**Draft Convention on laundering, the financing of terrorism,  
search, seizure and confiscation of the proceeds from crime**

Report  
Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group

*Summary*

The Committee welcomes the Draft Convention on laundering, the financing of terrorism, search, seizure and confiscation of the proceeds from crime (see Doc 10356 rev.) as a valuable and timely contribution to the development of international efforts in this field. Whilst further provisions in this area are crucial to combating effectively international organised crime and terrorism, it is an area in which a very delicate balance must be struck between, on the one hand, the public interest in disrupting and preventing such activities, and on the other, proper protection of individual rights and freedoms.

The Committee therefore proposes a number of amendments to this very lengthy and complex instrument, intended to reinforce it by ensuring full respect for protected rights and avoiding future obstacles to ratification or implementation.

## I. Draft opinion

1. The Parliamentary Assembly welcomes the draft Convention on laundering, the financing of terrorism, search, seizure and confiscation of the proceeds from crime, which it considers to be an important, timely and valuable contribution to European efforts in this field. It supports the aim of the significant revisions to the earlier Convention on laundering, search, seizure and confiscation of the proceeds from crime and in particular application of the extended provisions to the especially serious matter of financing of terrorism.
2. Whilst the intent and purpose motivating the draft Convention are to be encouraged, some of its provisions as currently expressed may be or result in measures which are inconsistent with fundamental rights, including the existing obligations of potential Parties under the European Convention on Human Rights and its additional Protocols. These measures should therefore be revised with the aim also of strengthening the Convention by avoiding future obstacles to ratification or implementation, in accordance with the fundamental principle of the rule of law.
3. The Assembly therefore recommends that the Committee of Ministers make the following amendments to the draft Convention:
  - i. in Article 1 ("Use of terms"), at the end of paragraph c, add the sentence "Such intent may be inferred from objective, factual circumstances";
  - ii. in Article 2 ("Application of the Convention to the financing of terrorism"), paragraph 2, before the words "financing of terrorism" add the words "offence of", and after the words "to this end" add the words "to other Parties";
  - iii. in Article 3 ("Confiscation measures"), at the end of paragraph 1, add the words "consistent with the principle of proportionality and with full respect for the rights of third parties";
  - iv. in Article 3, paragraph 5, after the words "legal system" add the words "subject to appropriate procedural safeguards consistent with their obligations under the European Convention on Human Rights and its protocols";
  - v. in Article 7 ("Investigative powers and techniques"), paragraph 1, after the first sentence add the new sentence "Such measures must ensure respect for the principle of proportionality";
  - vi. in Article 7, paragraph 2.a., after the word "bank" add the words "or non-banking financial institution"; in paragraph 2.b., delete the words "bank" and "banking"; and in paragraph 2.d., after the word "banks" add the word "or non-banking financial institutions", and replace the words "the bank customer" with the words "their customers" (English only);
  - vii. in Article 8 ("Legal remedies"), change the title of the Article to "Rights and remedies" and add a new paragraph 1 as follows: "Nothing in this Convention shall be construed in a manner which would violate or allow violations of the rights contained in the European Convention on Human Rights and those of its protocols by which a Party is bound";
  - viii. in Article 8, retain reference to Articles 6 and 7;
  - ix. in Article 9 ("Laundering offences"), paragraph 3, replace all the words following the words "this Article" (including the sub-paragraphs) with the words "where objective, factual circumstances indicate that the offender ought to have suspected that the property was proceeds";
  - x. in Article 9, at the end of paragraph 5, add the sentence "Each Party shall ensure that at any trial for money laundering, the prosecution is required to submit charges against a defendant relating to all categories of offence disclosed by its evidence, consistent with national provisions on joinder and severance of charges, or be prevented from bringing such charges at a later date";
  - xi. in Article 9, paragraph 6, replace the words "a predicate offence" with the words "amongst a proven series of predicate offences"; and at the end of the paragraph replace the word "offence" with the words "of these offences generated the proceeds in question";

- xii. in Article 10 ("Corporate liability"), after the words "liable for" replace the word "the" with the words "a lack of due diligence in preventing or reporting"; replace the words "who has" by the words "by abusing"; and add the word "relevant" in sub-paragraph a. before the word "power", in sub-paragraph b. before the word "decisions" and in sub-paragraph c. before the word "control";
- xiii. in Article 10, delete paragraph 2;
- xiv. if amendment xiii above is not adopted, in Article 10, in paragraph 2, after the words "liable where", replace the word "the" with the words "a culpable";
- xv. in Article 12 ("Measures to prevent money laundering"), at the end of paragraph 2.a.ii. add the words "whilst respecting the principles of legal privilege and confidential lawyer-client relations";
- xvi. in Article 27 ("Grounds for refusal"), add a new paragraph 1 as follows: "Co-operation under this chapter shall be refused where the action sought would result in violation of the rights protected by the European Convention on Human Rights and those of its additional protocols by which the Party may be bound";
- xvii. in Article 27, paragraph 1, add a new sub-paragraph a. as follows: "where the requested Party has substantial grounds for believing that the request is made for the purpose of prosecuting a person for reasons of race, religion, nationality or political opinion, or that the situation of that person risks being prejudiced for one or more of those reasons";
- xviii. in Article 31 ("Recognition of foreign decisions"), add a new paragraph 2 as follows: "Recognition shall be refused if it emerges that the decision is the result of a flagrant denial of justice";
- xix. in Article 44 ("Damages"), add a new paragraph 1 as follows: "Each Party shall ensure that compensation is made available to persons whose property has been subject to measures of confiscation, freezing or seizure which subsequently transpire to have been unjustified";
- xx. in Article 47 ("Monitoring mechanism and settlement of disputes"), ensure that, whatever internal mechanisms the Parties may establish, the eventual monitoring mechanism is ultimately singular, ensuring that all Parties are subject to the same obligations;
- xxi. in Article 51 ("Relationship to other conventions and agreements"), delete paragraph 4;
- xxii. in Article 51, paragraph 4, after the words "shall apply Community and EU rules", add the words "insofar as these establish a more intensive co-operation than that established by this Convention, subject to the same safeguards";
- xxiii. in Article 52 ("Declarations and reservations"), delete paragraph 2;
- xxiv. in Article 52, add a new sentence at the end of paragraph 3 as follows: "Any reservations made under the preceding paragraphs must be limited to a maximum duration of five years";
- xxv. in Appendix I, replace the word "terrorism" with the words "acts of terrorism".

**II. Explanatory memorandum**  
by Mr Bartumeu Cassany, Rapporteur

**Introduction**

1. The Parliamentary Assembly has been invited by the Committee of Ministers to state its opinion on the draft Convention on laundering, the financing of terrorism, search, seizure and confiscation of the proceeds from crime. This report is based on the text of the draft Convention as finalised after the 5<sup>th</sup> meeting of the Committee of Experts on the revision of the convention on laundering, search, seizure and confiscation of the proceeds from crime (PC-RM) on 24-26 November 2004. This draft convention began as work to update the Convention on laundering, search, seizure and confiscation of the proceeds from crime (CETS 141), but was subsequently enlarged to encompass also the question of terrorist financing. From the outset, the Rapporteur wishes to state his recognition of the need, as evidenced by experience and the consideration of best practices at national level, for further work in this area, in particular in relation to the hitherto unaddressed question of terrorist financing. He appreciates that the elaboration of this draft convention is the latest stage in a gradual process of development of the law in this area, building on provisions already instituted through the earlier convention.

2. The issue of taking action against property associated with criminal activity, and also international cooperation in this area, require a delicate balance. On the one hand, authorities pursue a genuine public interest by interfering with property transactions and ownership related to or arising from serious criminal offences. On the other hand, these interferences may raise serious issues with respect to fundamental rights such as the right to a fair trial and the right to peaceful enjoyment of possessions, protected by Article 6 and by Article 1 of Protocol No 1 of the European Convention on Human Rights (ECHR) respectively.

3. Whilst the draft convention as a whole is welcomed and supported by the Rapporteur, therefore, certain points should be given further consideration. It is important that in pursuing the public interest, states do not lose sight of the rights of individuals. The draft convention should be especially attentive to issues arising under Article 1 of Protocol No 1, notably the principle of proportionality, the rights of third parties and the right to compensation for unjustified interferences. Furthermore, it must propose definitions and procedures which are fully consistent with the principle of legal certainty and the right to fair trial in all its aspects; all the more so in that it concerns the field of criminal law, thus also requiring full compliance with Article 7 ECHR.

4. On this basis, the Rapporteur makes the following comments on certain aspects of the draft convention, intended to reinforce the Convention by avoiding future obstacles to ratification or implementation.

**Article 1 – Use of terms**

5. Article 1.c. defines “instrumentalities” as “any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences” (emphasis added). It is unclear how intention to use property to commit a criminal offence is to be proved; by contrast, article 9, concerning laundering offences, helpfully provides that intent “may be inferred from objective, factual circumstances”. Given that under the draft convention, ‘instrumentalities’ may be liable to freezing, seizure or confiscation, it is essential that the same clarification be inserted in Article 1.c., in order to avoid unjustified or arbitrary measures against property.

**Article 2 – Application of the Convention to the financing of terrorism**

6. The Rapporteur understands paragraph 2 to mean that state authorities will be able to deal in certain ways with property used for the financing of terrorism or with the proceeds of the financing of terrorism. In its current wording, however, it is unclear and appears difficult to understand. Furthermore, paragraph 2 should specify that it requires cooperation only as between the Parties. The Rapporteur therefore proposes minor amendments to these ends.

**Article 3 – Confiscation measures**

7. The Rapporteur notes that paragraph 22 of the draft explanatory report, concerning Article 3, refers to and recites part of the judgment of the European Court of Human Rights in the case of *Phillips v. U.K.* The Court’s judgment emphasised in particular the importance of the existence of procedural safeguards to its finding that application of the reverse burden of proof/ statutory assumption had not violated Article 6 ECHR

(see paragraph 43 of the judgment). The Rapporteur considers it essential that Article 3 of the draft convention requires States to implement appropriate procedural safeguards, consistent in particular with Article 6 of the ECHR, and that the explanatory report makes fuller reference to the reasoning of the *Phillips* judgment.

8. *Phillips* is also relevant to paragraph 1, which allows authorities to confiscate, amongst other things, property of a value which corresponds to the proceeds from crime (presumably in cases where the proceeds themselves are no longer available). The legislative provisions applied by the UK court in this case limited confiscation to property held at any time since conviction or during the six years prior to the commencement of criminal proceedings. The Rapporteur considers that this temporal limitation contributes to proportionality between the public interest in interfering with the right to peaceful enjoyment of possessions and the extent of the interference itself, as required by Article 1 of Protocol No 1. It is therefore essential that Article 3 of the draft convention makes reference to the principle of proportionality, and that this point is properly clarified in the explanatory report.

9. Finally, the Rapporteur is concerned that Article 3 does not take account of the interests of third parties in confiscated property, in particular that which is confiscated in lieu of proceeds of crime; for example, a spouse's interest in the family home, a business partner's interest in commercial property, or an investor's interest in company assets. Whilst third parties' interests should not be allowed to frustrate confiscation of the offender's property – and in particular, should not be allowed to serve as a front disguising the real beneficiary of property otherwise subject to confiscation – legitimate third party interests must not be ignored. (See also the comment on Article 8 below.)

#### **Article 7 – Investigative powers and techniques**

10. Given that the draft convention is intended to ensure that Council of Europe provisions encompass the latest developments, the Rapporteur considers that the limitation of Article 6's application to banks alone is too restrictive and risks undermining the effectiveness of the draft convention as a whole. Since modern financial practices are conducted by a myriad of different institutions, not all of which fall within the category of 'bank' yet many of which provide analogous services, Article 6 should refer in addition to "non-banking financial institutions" or some similar, more general term.

11. Financial services nowadays are conducted almost entirely by means of computers, and thus fall within the scope of the Convention for the protection of individuals with regard to automatic processing of personal data (CETS 108). The Rapporteur considers that it would be valuable to make reference to the proportionality safeguard contained in Article 9.2 of CETS 108.

#### **Article 8 – Legal remedies**

12. Although this article stipulates the provision of effective remedies to ensure preservation of the rights of interested parties, the Rapporteur feels that the draft convention as a whole would be reinforced by an explicit general reference to respect for protected rights, which at present are relegated to paragraph 254 of the draft explanatory memorandum. One option would be to rename Article 8 "Rights and remedies" and to include a new paragraph 1 which would provide that nothing in the convention shall be construed as violating or allowing violations of the rights contained in the ECHR and its protocols by which the parties are bound.

13. The Rapporteur notes that in the existing text of Article 8, there appears to be doubt as to whether Parties would be obliged to offer effective remedies for those whose rights are affected by Articles 6 and 7. Given that Article 6 involves provisional measures which would interfere with the right to peaceful enjoyment of possessions (protected by Article 1 of Protocol No 1 to the ECHR) and that Article 7 has consequences for respect for private life and correspondence (protected by Article 8 ECHR), Parties should provide effective remedies also in relation to these articles, insofar as the rights affected are protected under their international legal obligations.

#### **Article 9 – Laundering offences**

14. The Rapporteur notes that in paragraphs 1 and 2 (taken from the previous Convention), offences are established only on proof of intention and knowledge. Paragraph 3, however, criminalises suspicion and a form of constructive knowledge ("ought to have assumed"). Recalling his comment on Article 1, the Rapporteur considers that the use of these terms in this way is highly problematic, both with respect to certainty of definition and from the practical perspective of how to furnish proof. The same purposes could be served by a single reference to objective, factual circumstances indicating that the offender ought to have suspected that the property was proceeds.

15. Paragraph 5 of Article 9 also gives rise to concern. Should an individual be prosecuted for money laundering, and during the trial the prosecution adduces evidence that the defendant was involved in the predicate offence without adding a relevant count to the indictment, a conviction for money laundering would create a serious risk of prejudice to any subsequent trial for the predicate offence, contrary to Article 6(2) ECHR, and may also raise issues in relation to the principle *ne bis in idem* contained in Article 4 of Protocol No 7 ECHR. A safeguard against this could be provided by requiring the prosecution to press for counts relating to all categories of offence disclosed by its evidence to be prosecuted against a suspect at the same trial.

16. Paragraph 6, as currently drafted, is difficult to understand and would appear to be potentially much wider than the intention expressed in the draft explanatory report. Furthermore, its lack of certainty risks causing violations of Article 7 ECHR. The Rapporteur considers that these problems could be resolved by the amendment proposed below.

#### **Article 10 – Corporate liability**

17. Paragraph 1 goes too far in identifying the natural persons concerned with the legal persons in which they hold the leading positions. It should be limited to cases where the natural person has failed to exercise due diligence in preventing or reporting criminal offences of money laundering, and require the natural person to have abused their leading position. Should the legal person's negligence thus be criminalised, however, it is also necessary to limit the categories of leading person in respect of whom due diligence must be exercised, to those with relevant competences, in order to avoid the legal person being criminalised for failure to exercise control over individuals who would not in any normal circumstances be conceived as capable of engaging in money laundering. This could be done by referring to 'relevance' in the basis of the "leading position".

18. If paragraph 1 is thus amended, paragraph 2 becomes unnecessary. If, however, paragraph 2 must remain, then reference should be made to a "culpable" lack of supervision or control, so as to exclude cases where unforeseen temporary circumstances allow employees to engage in money laundering uncontrolled by the usual supervisory regime.

#### **Article 12 – Measures to prevent money laundering**

19. The Rapporteur has especial concerns in relation to this article, in particular its paragraph 2, which provides that "legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes" would be required, amongst other things, to report suspicions on money laundering.

20. Firstly, the category of persons to whom this provision would apply is potentially very wide, and indeed may be so imprecisely defined as to violate the principle of legal certainty, and also Article 7 ECHR if the requirement is established under criminal law. The Rapporteur notes that in earlier drafts of the convention, a list of subjects was provided, which he considers to carry greater certainty and therefore to be preferable. It should be noted that Article 53 of the draft convention provides for an expedited amendment process; in case the initial list subsequently proved to be incomplete, therefore, it could be extended without great difficulty.

21. Secondly, the Rapporteur is uneasy over the implications of the obligation to denounce. This is of particular concern in relation to persons who would not normally be subject to professional duties of any kind, let alone one such as this, which could be enforced by criminal sanctions. If such an obligation is necessary, then due consideration should be given to legal privilege and the confidentiality of lawyer-client relations, in accordance with the provisions of Article 6 ECHR (see e.g. *Ocalan v. Turkey*, Chamber judgment of 12/3/03, paragraph 146). Furthermore, the presence of this obligation adds weight to the argument for limitation of and certainty in the group of persons to which paragraph 2 applies.

#### **Article 27 – Grounds for refusal**

22. This article contains the grounds on which one State party may refuse to cooperate with another. It is the only safeguard against unfair proceedings in one country generating measures highly prejudicial to the peaceful enjoyment of possessions, such as seizure, freezing and confiscation of property, in another. Article 27 of the draft convention, however, contains no specific reference to States' obligations under the ECHR, mentioning only that cooperation may be refused "if the action sought would be contrary to the fundamental principles of the legal system of the requested Party" (paragraph 1.a). In the Rapporteur's opinion, it should

also state that cooperation "shall" be refused where execution of the request would result in violation of the rights protected by the ECHR and those of its additional Protocols by which the Party may be bound, in particular Article 6 and Article 1 of Protocol No 1. This is not necessarily a question of 'extra-territorial jurisdiction' (i.e. a State being responsible for violations occurring outside its territory) since the actions of the requested State would take effect within its territorial jurisdiction.

23. The Rapporteur notes that in an earlier draft, a further ground for refusal related to prosecutions for reasons of race, religion, nationality or political opinion, or where the situation of the person concerned risks being prejudiced for one or more of those reasons. Given its inclusion in Article 3.2 of the European Convention on Extradition (CETS 024), in Article 5 of the European Convention on the Suppression of Terrorism (CETS 090), and in Article 6.c. of the European Convention on the International Validity of Criminal judgments (CETS 070), such a provision should also be included in the draft convention, preferably as part of paragraph 1 of Article 27. Certainly, it is inadequate to refer only very obliquely to this important protection, as is done in paragraph 211 of the draft explanatory report, which recalls, for other purposes, Article 15 of the UN Convention on the suppression of the financing of terrorism.

#### **Article 31 – Recognition of foreign decisions**

24. A similar concern to the foregoing relates to this article, which provides for recognition of foreign judicial decisions and the grounds on which recognition may be refused. The European Court of Human Rights, in its judgment of 26/6/92 in the case of *Drozd & Janousek v. France & Spain*, ruled that States party were "obliged to refuse their cooperation if it emerges that [a] conviction is the result of a flagrant denial of justice". In the Rapporteur's view, explicit reference should be made here to states' obligation to refuse recognition where it emerges that the judicial decision is the result of a flagrant denial of justice.

#### **Article 44 - Damages**

25. Whilst this article refers to the obligations of States party towards one another in relation to claims for damages arising from co-operation under the convention, there is nowhere in the draft convention any mention of a right to compensation for unjustified interferences with the right to peaceful enjoyment of property, as implied by Article 1 of Protocol No 1 to the ECHR. The Rapporteur considers that reference should first be made to States' obligation to compensate persons whose property has been subject to measures of confiscation, freezing or seizure which subsequently transpire to have been unjustified.

#### **Article 47 – Monitoring mechanism and settlement of disputes**

26. The Rapporteur notes that the draft convention as it stands leaves unresolved the very important question of the most appropriate monitoring mechanism. Aware that the European Union may accede to the final Convention, the Rapporteur feels that it is essential that, whatever internal mechanisms the Parties may establish, the eventual monitoring mechanism is ultimately singular, with the same monitoring body, procedure and standards for all Parties, ensuring that all Parties are subject to the same obligations.

#### **Article 51 – Relationship to other convention and agreements**

27. Paragraph 4 of this article would exclude the Convention from taking effect at national level in areas subject to EU competence. As expressed, it does not fulfil the aim stated in the draft Explanatory Report – to ensure that the highest standards of cooperation prevail – as it assumes that EU provisions will invariably be superior. Furthermore, the Rapporteur feels that it runs contrary to the purpose of a convention, which is to ensure that national measures comply with the provisions of the convention; indeed were this paragraph in its current wording expressed as a reservation, it might well be unlawful. The best solution, therefore, would be to delete the paragraph altogether; alternatively, it should be amended to ensure that it is narrowly tailored to the aims expressed in the explanatory report and that the Convention's safeguards are always respected.

#### **Article 52 – Declarations and reservations**

28. The Rapporteur considers that the provisions on reservations are rather wide and risk undermining the effectiveness and purpose of the draft convention, in particular those contained in paragraph 2, which should be removed. In addition, the Rapporteur would propose as a general point that all reservations be limited to five years' duration, given that the basic structure of the draft convention is similar to that of CETS 141, which has already been ratified by all member States of the Council of Europe.

## Appendix I

29. This contains a list of predicate offences (those which may generate proceeds which may be the subject of the convention), amongst which appear "terrorism, including the financing of terrorism". The Rapporteur is well aware of the problems in defining terrorism, and fears that use of the word "terrorism" may cause these problems to impede the effectiveness of the convention. It would be preferable, therefore, to refer to "acts of terrorism", as these have been listed in various texts, including the European Convention on the Suppression of Terrorism, as amended by the 2003 Protocol.

## Conclusions

30. The following amendments are therefore proposed to the draft Protocol:
- i. in Article 1 ("Use of terms"), at the end of paragraph c, add the sentence "Such intent may be inferred from objective, factual circumstances";
  - ii. in Article 2 ("Application of the Convention to the financing of terrorism"), paragraph 2, before the words "financing of terrorism" add the words "offence of", and after the words "to this end" add the words "to other Parties";
  - iii. in Article 3 ("Confiscation measures"), at the end of paragraph 1, add the words "consistent with the principle of proportionality and with full respect for the rights of third parties";
  - iv. in Article 3, in paragraph 5, after the words "legal system" add the words "subject to appropriate procedural safeguards consistent with their obligations under the European Convention on Human Rights and its protocols";
  - v. in Article 7 ("Investigative powers and techniques"), in paragraph 1, after the first sentence add the new sentence "Such measures must ensure respect for the principle of proportionality";
  - vi. in Article 7, in paragraph 2.a., after the word "bank" add the words "or non-banking financial institution"; in paragraph 2.b., delete the words "bank" and "banking"; and in paragraph 2.d., after the word "banks" add the word "or non-banking financial institutions", and replace the words "the bank customer" with the words "their customers";
  - vii. in Article 8 ("Legal remedies"), change the title of the Article to "Rights and remedies" and add a new paragraph 1 as follows: "Nothing in this Convention shall be construed in a manner which would violate or allow violations of the rights contained in the European Convention on Human Rights and those of its protocols by which a Party is bound";
  - viii. in Article 8, retain reference to Articles 6 and 7;
  - ix. in Article 9 ("Laundering offences"), in paragraph 3, replace all the words following the words "this Article" (including the sub-paragraphs) with the words "where objective, factual circumstances indicate that the offender ought to have suspected that the property was proceeds";
  - x. in Article 9, at the end of paragraph 5 add the sentence "Each Party shall ensure that at any trial for money laundering, the prosecution is required to submit charges against a defendant relating to all categories of offence disclosed by its evidence, consistent with national provisions on joinder and severance of charges, or be prevented from bringing such charges at a later date";
  - xi. in Article 9, in paragraph 6, replace the words "a predicate offence" with the words "amongst a proven series of predicate offences"; and at the end of the paragraph replace the word "offence" with the words "of these offences generated the proceeds in question";
  - xii. in Article 10 ("Corporate liability"), after the words "liable for" replace the word "the" with the words "a lack of due diligence in preventing or reporting"; replace the words "who has" by the words "by abusing"; and add the word "relevant" in sub-paragraph a. before the word "power", in sub-paragraph b. before the word "decisions", and in sub-paragraph c. before the word "control";
  - xiii. in Article 10, delete the paragraph 2;



- xiv. in Article 10, in paragraph 2, after the words "liable where", replace the word "the" with the words "a culpable";
- xv. in Article 12 ("Measures to prevent money laundering"), in paragraph a., replace the words "legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes" with a list of the legal and natural persons to whom the measures will apply;
- xvi. in Article 12, at the end of paragraph 2.a.ii., add the words "whilst respecting the principles of legal privilege and confidential lawyer-client relations";
- xvii. in Article 27 ("Grounds for refusal"), add a new paragraph 1 as follows: "Co-operation under this chapter shall be refused where the action sought would result in violation of the rights protected by the European Convention on Human Rights and those of its additional protocols by which the Party may be bound";
- xviii. in Article 27, in paragraph 1, add a new sub-paragraph a. as follows: "where the requested Party has substantial grounds for believing that the request is made for the purpose of prosecuting a person for reasons of race, religion, nationality or political opinion, or that the situation of that person risks being prejudiced for one or more of those reasons";
- xix. in Article 31 ("Recognition of foreign decisions"), add a new paragraph 2 as follows: "Recognition shall be refused if it emerges that the decision is the result of a flagrant denial of justice";
- xx. in Article 44 ("Damages"), add a new paragraph 1 as follows: "Each Party shall ensure that compensation is made available to persons whose property has been subject to measures of confiscation, freezing or seizure which subsequently transpire to have been unjustified";
- xxi. in Article 47 ("Monitoring mechanism and settlement of disputes"), ensure that, whatever internal mechanisms the Parties may establish, the eventual monitoring mechanism is ultimately singular, ensuring that all Parties are subject to the same obligations;
- xxii. in Article 51 ("Relationship to other conventions and agreements"), delete paragraph 4;
- xxiii. in Article 51, in paragraph 4, after the words "shall apply Community and EU rules", add the words "insofar as these establish a more intensive cooperation than that established by this Convention, subject to the same safeguards";
- xxiv. in Article 52 ("Declarations and reservations"), delete paragraph 2;
- xxv. in Article 52, add a new sentence at the end of paragraph 3 as follows: "Any reservations made under the preceding paragraphs must be limited to a maximum duration of five years";
- xxvi. in Appendix I, replace the word "terrorism" with the words "acts of terrorism".

*Reporting committee:* Committee on Legal Affairs and Human Rights

*Reference to committee:* Doc 10356, Reference No 3031 of 23 November 2004

*Draft opinion* adopted unanimously by the Committee on 16 December 2004

*Members of the Committee:* Mr Eduard Lintner (*Chairperson*), Mr Dick Marty, Mr Jerzy Jaskiernia, Mr Erik Jurgens (*Vice-Chairpersons*), Mrs Birgitta Ahlqvist, Mr Zekeriya Akçam, Mr Athanasios **Aletras**, Mr Gulamhuseyn Alibeyli, Mr Aklexander **Arabadjiev**, Mr Miguel Arias, Mrs Teuta Arifi, Mr Abdülkadir **Ateş**, Mrs Maria Eduarda **Azevedo**, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Sali **Berisha**, Mr Rudolf Bindig, Mr Giorgi Bokeria, Mr Malcolm **Bruce**, Mrs Pia Christmas-Møller, Mr Boriss **Cilevics**, Mr Viorel Coifan, Mr Marcello Dell'Utri, Mr Martin Engeset, Mrs Lydie **Err**, Mr Václav Exner, Mr Valeriy Fedorov, Mr Robert **Fico**, Mr György **Frunda**, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mr Süleyman **Gündüz**, Mrs Gultakin **Hajiyeva**, Mrs Karin Hakl, Mr Serhiy **Holovaty**, Mr Michel **Hunault**, Mr Sergei **Ivanov**, Mr Roman Jakič, Mr Neven Jurica, Mr Antti Kaikkonen, Mr Hans Kaufmann, Mr Ulrich Kelber, Mr András Kelemen, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Henryk **Kroll**, Mr František Kroupa, Mr Jean-Pierre Kucheida, Mrs Sabine Leutheusser-Schnarrenberger, Mr Andrea **Manzella**, Mr Alberto Martins, Mr Tito Masi, Mr Kevin **McNamara**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić (alternate: Mr Ljubiša **Jovašević**), Mr Ionel Olteanu, Mrs Ann Ormonde (alternate: Mr Paschal **Mooney**), Mrs Agnieszka **Pasternak**, Mr Ivan Pavlov, Mr Johan Pehrson, Mr Piero Pellicini, Mrs Sólveig Pétursdóttir, Mr Rino **Piscitello**, Mr Petro Poroshenko, Mrs Maria Postoica, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguz, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mr Václav Stankevic, Mr Petro Symonenko, Mr Miltiadis Varvitsiotis (alternate: Mr Nikolaos **Dendias**), Mr John Wilkinson (alternate: Mr Tony **Lloyd**), Mrs Renate Wohlwend, Mr Vladimir Zhirinovskiy, Mr Zoran **Žižic**

N.B. The names of those members who were present at the meeting are printed in bold.

*Secretariat of the Committee:* Mr Schokkenbroek, Mr Schirmer, Mrs Clamer, Mr Milner